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Attorneys for Debtors

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED  
 FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**DECLARATION OF SUSAN M. SMITH  
 IN SUPPORT OF USA SECURITIES,  
 LLC'S MOTION TO CLOSE CASE AND  
 REQUEST FOR FINAL DECREE**

Affects:

**(Affects USA Securities, LLC)**

- ☐ All Debtors  
☐ USA Commercial Mortgage Company  
☒ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA Capital First Trust Deed Fund, LLC

**Date:**

**Time:**

1 I, Susan M. Smith, hereby declare and state as follows:

2 1. On April 13, 2006 (“Petition Date”), USA Commercial Mortgage Company  
 3 (“USACM”), USA Capital Realty Advisors, LLC (“USA Reality”), USA Capital Diversified Trust  
 4 Deed Fund, LLC (“DTDF”), USA Capital First Trust Deed Fund, LLC (“FTDF” and together with  
 5 DTDF, the “Funds”), and USA Securities, LLC (“USA Securities”) (collectively, the “Debtors”)   
 6 filed petitions seeking relief under Chapter 11 of the Bankruptcy Code in the United States  
 7 Bankruptcy Court for the District of Nevada (the “Chapter 11 Cases”). By order entered on June  
 8 9, 2006, the Court approved the joint administration of the Chapter 11 Cases.

9 2. Effective as of the Petition Date, Mesirow Financial Interim Management, LLC  
 10 (“Mesirow”) has been employed as crisis managers for the Debtors, and Thomas J. Allison of  
 11 Mesirow has served as the Debtors’ Chief Restructuring Officer. I am employed by Mesirow as a  
 12 Senior Vice President, and I have worked extensively for the Debtors and have overseen  
 13 substantial aspects of these cases under Mr. Allison’s direction.

14 3. This Declaration is based on my personal knowledge or, if so stated, upon  
 15 information and belief. Thus, all matters set forth in this Declaration are based on (a) my personal  
 16 knowledge, (b) my review of relevant documents and records, (c) my view, based upon my  
 17 experience and knowledge of the Debtors’ business and financial condition, and/or (d) as to  
 18 matters involving United States bankruptcy law or rules, my reliance on advice of bankruptcy  
 19 counsel to the Debtors. If I were called upon to testify, I could and would testify competently to  
 20 the facts set forth herein.

21 4. On November 21, 2007, USA Securities filed its Final Report of Action Taken and  
 22 Progress Towards Consummation of Confirmed Plan of Reorganization (“Final Report”) pursuant  
 23 to Article VIII, Section U of the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization  
 24 (the “Plan”), and Paragraph 75 of the Court’s “Order Confirming the Debtors’ ‘Third Amended  
 25 Joint Chapter 11 Plan of Reorganization,’ as Modified Herein” (Docket No. 2376) (the  
 26 “Confirmation Order”). Unless otherwise stated, all capitalized words and terms used herein are  
 27 defined in the confirmed Plan. The Final Report and this Declaration are submitted in support of  
 28

1 USA Securities Motion to Close Case and Request for Final Decree (“Motion to Close”) filed  
2 contemporaneously herewith.

3 5. As set forth below, as of this date, the USA Securities Estate has been fully  
4 administered.

5 **I. Transfer of Assets and Distributions Made to Date**

6 6. All assets in the USA Securities estate have been distributed in accordance with the  
7 Plan, or will be distributed within ten days after entry of an Order granting the Motion to Close.

8 **II. Resolution of Proofs of Claim Filed Against USA Securities**

9 7. As of the Effective Date, 45 proofs of claim had been filed against USA Securities.

10 8. All proofs of claim filed against USA Securities have been withdrawn or  
11 disallowed except (A) claim number 22 filed by Michael Mollo (“Mollo Claim”) which, pursuant  
12 to a stipulation entered into with USA Securities and approved by Order dated May 25, 2007  
13 (Docket No. 3768), has been allowed as a \$50 priority claim, and (B) claim number 42 filed by the  
14 Nevada Department of Taxation in the amount of \$1,831.29, \$1,692.96 of which is a priority  
15 claim, and to which no objection was filed (“Nevada Tax Claim”).

16 9. The Mollo claim will be paid in the amount of \$50 and USA Securities will pay the  
17 priority portion of the Nevada Tax Claim.

18 10. Thus, all proofs of claim filed against USA Securities have now been resolved.

19 **III. Resolution of Scheduled Claims**

20 11. USA Securities is not required to make distributions on account of any of the  
21 claims originally listed on its Schedules.

22 12. On June 15, 2006, USA Securities filed its Schedules listing two priority claims  
23 and five unsecured, non-priority claims (Docket No. 675).

24 13. The two priority claims were in favor of the Nevada Department of Taxation,  
25 which thereafter filed the Nevada Tax Claim superseding its scheduled claims.

26 14. The remaining five unsecured, non-priority claims were all listed on the Schedules  
27 as contingent and unliquidated. As such, they are not deemed to be allowed claims. None of these  
28

1 five claimants filed a proof of claim so USA Securities has no liability on account of these five  
2 scheduled claims either.

3 **IV. Resolution of Litigation**

4 15. All motions, contested matters, and/or adversary proceedings involving USA  
5 Securities have been resolved.

6 16. On or prior to January 18, 2007, the following three appeals from the Confirmation  
7 Order were filed, which were ultimately assigned to the United States District Court for the  
8 District of Nevada (the "District Court"): (a) an appeal by USA Investment Partners, LLC,  
9 designated as District Court No. 07-00138 (the "IP Appeal"); (b) an appeal by Debt Acquisition  
10 Company of America V, LLC, designated as District Court No. 07-00160 (the "DACA Appeal");  
11 and (c) an appeal by the so-called "Lenders Protection Group" and the Jones Vargas Direct  
12 Lenders, designated as District Court No. 07-00072 (the "LPG Appeal") (collectively, the  
13 "Appeals").

- 14 a. Pursuant to USA Securities' motion to dismiss, the District Court has entered an  
15 Order dismissing the IP Appeal with prejudice, and that Order is now final. *See*  
16 IP Appeal, Docket No. 28.
- 17 b. Pursuant to a stipulation that was approved by an Order entered by the District  
18 Court on July 12, 2007, USA Securities has been dismissed from the DACA  
19 Appeal. *See* DACA Appeal, Docket No. 77.
- 20 c. Pursuant to a stipulation that was approved by an Order entered by the District  
21 Court on July 11, 2007, USA Securities has been dismissed from the LPG  
22 Appeal. *See* LPG Appeal, Docket No. 98.<sup>1</sup>

23 17. On July 7, 2007, Compass filed a "conditional" complaint against, in relevant part,  
24 USA Securities and the other Debtors, designated as Adversary Proceeding No. 07-01105 (the  
25 "Compass Proceeding"), seeking to revoke the Confirmation Order. On October 26, 2007,  
26

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27  
28 <sup>1</sup> After the dismissal of USA Securities from the DACA Appeal and LPG Appeal, the District Court issued its joint  
opinion affirming the Confirmation Order.

1 Compass filed a Notice of Dismissal voluntarily dismissing USA Securities from the Compass  
2 Proceeding. *See* Compass Proceeding, Docket No. 16.

3 **V. Dissolution of USA Securities**

4 18. On November 20, 2007, USA Securities was formally dissolved as an entity under  
5 the laws of the State of Nevada

6  
7 Dated this 21st day of November, 2007

8 

9  
10 Susan M. Smith

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12 956081